

**2009 DRAFTING REQUEST****Bill**Received: **09/02/2008**Received By: **phurley**Wanted: **As time permits**

Identical to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing:

This file may be shown to any legislator: **NO**Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Courts - limitations  
Courts - evidence**

Extra Copies:

Submit via email: **YES**Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Time limit for filing petitions for review

---

**Instructions:**

07-4483

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 01/15/2009	csicilia 02/13/2009		_____			S&L
/1			mduchek 02/13/2009	_____	sbasford 02/13/2009		S&L
				_____	cduerst 02/13/2009		
				_____	cduerst 02/13/2009		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	phurley	csicilia	mduchek		mbarman	mbarman	
	02/16/2009	02/16/2009	02/16/2009		02/16/2009	02/27/2009	

FE Sent For: "1/2" @ intro. 3/3/09

<END>

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/1		2js 2/16 09	mduchek 02/13/2009		sbasford 02/13/2009 cdurst 02/13/2009 cdurst 02/13/2009		

*to send email w/ jacketing buttons*

FE Sent For:

**<END>**

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May Contact:

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/1			mduchek 02/13/2009	_____	sbasford 02/13/2009 cduerst 02/13/2009		

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Wanted: **As time permits**

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By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Courts - limitations  
Courts - evidence**

Extra Copies:

Submit via email: **NO**

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07-4483

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/1			mduchek 02/13/2009	_____	sbasford 02/13/2009		

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For: Lena Taylor (608) 266-5810

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/?	phurley 01/15/2009	csicilia 02/13/2009	lrb_lps				

FE Sent For:

2/13  
<END>

## 2007 DRAFTING REQUEST

### Bill

Received: 08/11/2008

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Lena Taylor (608) 266-5810

By/Representing: Eric Peterson

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: Courts - limitations

Extra Copies:

Submit via email: YES

Requester's email: Sen.Taylor@legis.wisconsin.gov

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

---

### Topic:

Time limits for appeals

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### Instructions:

Redraft 07-3393 with changes cited in email dated 8-11-08

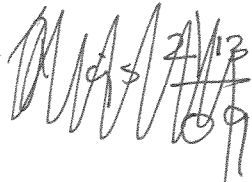
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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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phurley

 7/13/09

FE Sent For:

<END>

## 2007 SENATE BILL 418

January 25, 2008 – Introduced by Senator TAYLOR, cosponsored by Representative BIES, by request of Wisconsin Judicial Council. Referred to Committee on Judiciary, Corrections, and Housing.

- 1     **AN ACT** *to renumber and amend* 808.10; *to amend* 809.62 (1) (intro.) and  
2           809.62 (3); *to repeal and recreate* 809.24 (4) and 809.32 (4); and *to create*  
3           808.10 (2), 809.32 (5) and 809.62 (1m) of the statutes; **relating to:** appellate  
4           time limits and procedure.

---

### *Analysis by the Legislative Reference Bureau*

Current law requires that a person seeking supreme court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. This bill tolls the time for filing a petition for review while a timely motion for reconsideration is pending in the court of appeals. The bill establishes revised time limits within a petition may be filed, amended, or withdrawn, and within which an opposing party may respond, following the court of appeals determination of the motion for reconsideration.

Under current law, if the attorney in a case appealed to the court of appeals is of the opinion that a petition for review in the supreme court would be frivolous, he or she must advise his or her client of the reasons for that opinion and that the client may file a petition for review. If the client decides to appeal to the supreme court, the attorney shall file a petition for review that includes the facts and procedural status of the case, the dispositions of the case in the lower courts, and an appendix containing the judgments, orders, findings of fact, conclusions of law, and other decisions necessary for an understanding of the petition. The client files a

**SENATE BILL 418**

supplemental petition containing the statement of the issues and arguments in the case. The petition and supplemental petition must be filed in the supreme court within 30 days after the decision or order of the court of appeals.

This bill prohibits the filing of a petition or supplemental petition in the supreme court until after the court of appeals issues a response to a timely motion for reconsideration of its decision or order. If a person filed a petition or supplemental petition in the supreme court before the court of appeals issued a response to a timely motion for reconsideration, the bill requires the person to file a notice affirming, withdrawing, or amending the pending petition or supplemental petition, within 14 days after the court of appeals decision. If a petition or supplemental petition in the supreme court was made before the court of appeals issued response to a motion for reconsideration, and that motion was denied, the bill allows the other party 14 days after the court of appeals denial to file a response to the petition or supplemental petition. The bill gives that party the same 14-day period to respond to a petition or supplemental petition filed after the motion for reconsideration was denied, or after the petition or supplemental petition was affirmed or amended in response to an amended court of appeals decision, after reconsideration.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 808.10 of the statutes is renumbered 808.10 (1) and amended to  
2 read:

3           808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision or order of the court of  
4 appeals is reviewable by the supreme court only upon a petition for review granted  
5 by the supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62  
6 (1m), the petition for review shall be filed in the supreme court within 30 days of the  
7 date of the decision of the court of appeals.

8           **SECTION 2.** 808.10 (2) of the statutes is created to read:

9           808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. (a) Filing of  
10 a motion for reconsideration in the court of appeals under s. 809.24 (1) within 20 days  
11 after the date of a decision of the court of appeals tolls the time for filing a petition  
12 for review in the supreme court.

## SENATE BILL 418

1 (b) If the motion for reconsideration is filed in the court of appeals before any  
2 petition for review is filed in the supreme court, the 30-day time period to file the  
3 petition for review starts on the date on which the court of appeals determines the  
4 motion for reconsideration by filing an order denying the motion for reconsideration  
5 or an amended decision.

6 **SECTION 3.** 809.24 (4) of the statutes is repealed and recreated to read:

7 809.24 (4) No motion for reconsideration of a court of appeals decision issued  
8 under s. 809.105 or 809.107 is permitted. *as affected by Supreme Court order 04-08*

9 **SECTION 4.** 809.32 (4) of the statutes is repealed and recreated to read:

10 809.32 (4) NO-MERIT PETITION FOR REVIEW; PETITIONS. (a) *Petition and*  
11 *supplemental petition.* If a fully briefed appeal is taken to the court of appeals and  
12 the attorney is of the opinion that a petition for review in the supreme court under  
13 s. 809.62 would be frivolous and without any arguable merit, the attorney shall  
14 advise the person of the reasons for this opinion and that the person has the right  
15 to file a petition for review. If requested by the person, the attorney shall file a  
16 petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall  
17 file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c),  
18 and (e). *if tolling 30 days*

19 (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and  
20 supplemental petition shall both be filed within 30 days after the date of the decision  
21 or order of the court of appeals.

22 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may  
23 file a response to the petition and supplemental petition within 14 days after the  
24 service of the supplemental petition.

25 **SECTION 5.** 809.32 (5) of the statutes is created to read:

*as provided in 809.62(3)*

## SENATE BILL 418

## SECTION 5

1           809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR  
2 RECONSIDERATION. (a) *Petition*. If a motion for reconsideration is timely filed in the  
3 court of appeals under s. 809.24 (1), no party may file a petition or a supplemental  
4 petition in the supreme court until after the court of appeals issues an order denying  
5 the motion for reconsideration or an amended decision.

6           (b) *Supplemental petition*. If a motion for reconsideration in the court of  
7 appeals under s. 809.24 (1) is denied and a petition for review was filed before the  
8 motion for reconsideration was filed, and if the time for filing a supplemental petition  
9 under this subsection had not expired when the motion for reconsideration was filed,  
10 the supplemental petition may be filed within 14 days after the filing of the order  
11 denying the motion for reconsideration or within the time remaining to file the  
12 supplemental petition at the time that the motion for reconsideration was filed,  
13 whichever is greater.

14           (c) *Notice affirming, withdrawing, or amending pending petition or*  
15 *supplemental petition*. If the court of appeals files an amended decision in response  
16 to the motion for reconsideration under s. 809.24 (1), any party who filed a petition  
17 for review or a supplemental petition for review under this subsection prior to the  
18 filing of the motion for reconsideration must file with the clerk of the supreme court  
19 a notice affirming the pending petition or supplemental petition, a notice  
20 withdrawing the pending petition or supplemental petition, or an amendment to the  
21 pending petition or supplemental petition within 14 days after the date of the filing  
22 of the court of appeals' amended decision.

23           (d) *Responses*. If a motion for reconsideration is denied and a petition for review  
24 or a supplemental petition had been filed before the motion for reconsideration was  
25 filed, and if the time for filing a response to the petition or supplemental petition had

why would that happen?

**SENATE BILL 418**

Insert A  
1 not expired when the motion for reconsideration was filed, a response to the petition  
2 or the supplemental petition may be filed within 14 days of the order denying the  
3 motion for reconsideration. If a supplemental petition is filed under par. (b), the  
4 responding party may file a response to the supplemental petition within 14 days  
5 after service of the supplemental petition. After the petitioning party files the notice  
6 affirming or withdrawing the pending petition or supplemental petition or an  
7 amendment to the pending petition or supplemental petition under par. (c), the  
8 responding party must file a response to the notice or amendment within 14 days  
9 after service of the notice or amendment. The response to the notice or amendment  
10 may be an affirmation of the responding party's earlier response or a new response.

11 **SECTION 6.** 809.62 (1) (intro.) of the statutes is amended to read:

12 809.62 (1) (intro.) (1m) A party may file with the supreme court a petition for review  
13 of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days~~  
14 ~~of the date of the decision of the court of appeals.~~ Supreme court review is a matter  
15 of judicial discretion, not of right, and will be granted only when special and  
16 important reasons are presented. The following, while neither controlling nor fully  
17 measuring the court's discretion, indicate criteria that will be considered:

18 **SECTION 7.** 809.62 (1m) of the statutes is created to read:

19 809.62 (1m) (a) If a motion for reconsideration is timely filed in the court of  
20 appeals under s. 809.24 (1), no party may file a petition for review in the supreme  
21 court until after the court of appeals issues an order denying the motion for  
22 reconsideration or an amended decision.

23 (b) If a motion for reconsideration is denied and a petition for review had been  
24 filed before the motion for reconsideration was filed, and if the time for filing a  
25 response to the petition had not expired when the motion for reconsideration was

## SENATE BILL 418

## SECTION 7

1 filed, a response to the petition may be filed within 14 days of the order denying the  
2 motion for reconsideration.

3 (c) If the court of appeals files an amended decision in response to the motion  
4 for reconsideration under s. 809.24 (1), any party who filed a petition for review prior  
5 to the filing of the motion for reconsideration must file with the clerk of the supreme  
6 court a notice affirming the pending petition, a notice withdrawing the pending  
7 petition, or an amendment to the pending petition within 14 days after the date of  
8 the filing of the court of appeals' amended decision.

9 (d) After the petitioning party files a notice affirming or withdrawing the  
10 pending petition or an amendment to the pending petition under par. (c), the  
11 responding party must file a response to the notice or amendment within 14 days  
12 after service of the notice or amendment. The response may be an affirmation of the  
13 responding party's earlier response or a new response.

14 **SECTION 8.** 809.62 (3) of the statutes is amended to read:

15 809.62 (3) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing  
16 party may file a response to the petition within 14 days after the service of the  
17 petition. IF filed, the response may contain any of the following:

18 **SECTION 9. Effective date.**

19 (1) This act takes effect on the first day of the 4th month beginning after  
20 publication.

21 (END)

WISSpd.org  
go to  
practioners  
graph / outline for  
appellate  
no-meet online



## **Hurley, Peggy**

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**From:** Hanaman, Cathlene  
**Sent:** Monday, August 11, 2008 12:58 PM  
**To:** Hurley, Peggy  
**Subject:** FW: Drafting

Your draft, right?

---

**From:** Peterson, Eric  
**Sent:** Monday, August 11, 2008 12:45 PM  
**To:** Hanaman, Cathlene  
**Subject:** FW: Drafting

### ***Eric M. Peterson***

Office of Senator Lena C. Taylor  
608-266-5810

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**From:** Peterson, Eric  
**Sent:** Monday, August 11, 2008 12:41 PM  
**To:** Nelson, Robert P.  
**Subject:** Drafting

Hi Bob,

I need some drafting done. They are revisions of 2007 Senate Bill 418 and 419. The revisions to make are below. They will be proposed for introduction in the next session.

If you need clarification, please feel free to call. Also information and action on this draft can be shared with Marla Stephens and Attorney April Southwick of the Judicial Council

Thanks,  
Eric

→ 914 227 4891

### ***Eric M. Peterson***

Office of Senator Lena C. Taylor  
608-266-5810

#### **2007 SB 418 (Tolling time limit for filing petition for review in supreme court while motion for reconsideration is pending in court of appeals)**

##### Section 4 (lines 22-24) *ok*

809.32 (4) was amended by the Supreme Court in 2008 WI 108 on July 30, 2008, effective January 1, 2009, at the Judicial Council's request in Rule Change petition #04-08. Therefore, the new bill should incorporate that amendment.

##### Section 6 *ok*

809.62 (1) was amended and renumbered 809.62 (1m) by the Supreme Court in 2008 WI 108 on July 30, 2008, effective January 1, 2009, at the Judicial Council's request in Rule Change petition #04-08. Therefore, the new bill should amend (1m) rather than (1), and only the first sentence of bill Section 6 (lines 11-14) is needed.

##### Section 7

809.62 (1m) was created by the Supreme Court in 2008 WI 108 on July 30, 2008, effective January 1, 2009, at the Judicial Council's request in Rule Change petition #04-08. Therefore, the new bill should amend it rather than create it.

#### Section 8

809.62 (3) was amended by the Supreme Court in 2008 WI 108 on July 30, 2008, effective January 1, 2009, at the Judicial Council's request in Rule Change petition #04-08. Therefore, the new bill should incorporate that amendment.

#### 2007 SB 419 (Review of suppression rulings in juvenile appeals)

#### Section 3

I recommend deletion of “, an admission, or a consent” from lines 19-20. One does not admit or consent to a criminal complaint or information. Consequently, the addition of this language would be confusing to parties, practitioners and judges.

what about lines 7?

Juvs = admission  
no contest } allegations in  
the petition

Adults = guilty  
no contest } pleas  
to a criminal  
complaint

note: deferred pros  
do ~~not~~ use  
admissions +  
consents

Also: Is section 1 necessary?  
2 + 3 take care of that

# SUPREME COURT OF WISCONSIN

## NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 04-08

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In re: Proposed Amendments to Wis. Stat.  
§§ 809.30, 809.32 and 809.62

**FILED**

**JUL 30, 2008**

David R. Schanker  
Clerk of Supreme Court  
Madison, WI

---

On September 30, 2004, the Wisconsin Judicial Council filed a petition seeking to amend §§ 809.30(2)(b), 809.32(4) and 809.62(1) through (7) of the Rules of Appellate Procedure. This petition was the culmination of extensive work by a Judicial Council Committee, with assistance from the Appellate Practice Section and Criminal Law Section of the State Bar, and the Wisconsin Association of Criminal Defense Lawyers.

A public hearing was conducted on the petition on March 15, 2005. At the ensuing open administrative conference, the court discussed certain aspects of the petition and took the remaining issues under advisement. The matter was discussed at subsequent open conferences on March 21, 2007, and June 25, 2008, at which time the court voted unanimously to adopt portions of the petition, as set forth herein, and to deny other aspects of the

petition. The effective date of the amendments adopted herein will be January 1, 2009.

IT IS ORDERED that effective January 1, 2009:

**SECTION 1.** 809.107 (2) (bm) (intro.) of the statutes is amended to read:

809.107 (2) (bm) *Notice of intent to pursue postdisposition or appellate relief.* (intro.) A person shall initiate an appeal under this section by filing, within 30 days after the date of entry of the judgment or order appealed from, as specified in s. 808.04 (7m), a notice of intent to pursue postdisposition or appellate relief with the clerk of the circuit court in which the judgment or order appealed from was entered. Also within that time period, the appellant shall serve a copy of the notice of intent on the person representing the interests of the public, opposing counsel, the guardian ad litem appointed under s. 48.235 (1) (c) for the child who is the subject of the proceeding, the child's parent and any guardian and any custodian appointed under s. 48.427 (3) or 48.428 (2). If the record discloses that final adjudication occurred after the notice of intent was filed, the notice shall be treated as filed after entry of the judgment or order appealed from on the day of the entry of the final judgment or order. The notice of intent shall include all of the following:

**SECTION 2.** 809.30 (2) (b) (intro.) of the statutes is amended to read:

809.30 (2) (b) *Notice of intent to pursue postconviction or postdisposition relief.* (intro.) Within 20 days after the date

of sentencing or final adjudication, the person shall file in circuit court and serve on the prosecutor and any other party a notice of intent to pursue postconviction or postdisposition relief. If the record discloses that sentencing or final adjudication occurred after the notice of intent was filed, the notice shall be treated as filed after sentencing or final adjudication on the day of the sentencing or final adjudication.

The notice shall include all of the following:

**SECTION 3.** The following Judicial Council Committee Comment to s. 809.30 (2) (b) is included to read as follows:

Judicial Council Committee Comment

The amendment to s. 809.30 (2) (b) allows a notice of intent that is filed too early to be deemed filed on the date that a judgment and sentence or other final adjudication is filed. This is consistent with the procedure applicable to civil appeals under s. 808.04 (8).

**SECTION 4.** 809.32 (4) of the statutes is amended to read:

809.32 (4) NO-MERIT PETITION FOR REVIEW. If a fully briefed appeal is taken to the court of appeals and the attorney is of the opinion that a petition for review in the supreme court under s. 809.62 would be frivolous and without any arguable merit, the attorney shall advise the person of the reasons for this opinion and that the person has the right to file a petition for review. If requested by the person, the attorney shall file a petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e). The petition and supplemental petition shall both be filed within 30 days after the date of the decision or order

of the court of appeals. An opposing party may file a response to the petition and supplemental petition as provided in s. 809.62 (3) within 14 days after the service of the supplemental petition.

*Sec 6 in bill*  
**SECTION 5.** 809.62 (1) (intro.) of the statutes is renumbered s. 809.62 (1m) and amended to read:

809.62 (1m) A party may file with the supreme court a petition for review of an adverse decision of the court of appeals pursuant to s. 808.10 within 30 days of the date of the decision of the court of appeals. ~~Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. The following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered.~~

**SECTION 6.** 809.62 (1) (a) to (e) of the statutes are renumbered 809.63 (1r) (a) to (e).

**SECTION 7.** 809.62 (1g) of the statutes is created to read:

809.62 (1g) **DEFINITIONS.** In this section:

(a) "Adverse decision" means a final order or decision of the court of appeals, the result of which is contrary, in whole or in part, to the result sought in that court by any party seeking review.

(b) "Adverse decision" includes the court of appeals' denial of or failure to grant the full relief sought or the court of appeals' denial of the preferred form of relief.

(c) "Adverse decision" does not include a party's disagreement with the court of appeals' language or rationale in granting a party's requested relief.

**SECTION 8.** The following Judicial Council Committee Comment to s. 809.62 (1g) is included to read as follows:

Judicial Council Committee Comment

The definition in s. 809.62 (1g) codifies the holding in Neely v. State, 89 Wis. 2d 755, 757-58, 279 N.W.2d 255 (1979), to the effect that a party cannot seek review of a favorable result merely because of disagreement with the court of appeals' rationale. At the same time, s. 809.62 (1g) underscores the fact that a court of appeals' decision that is generally favorable to a party remains adverse to that party to the extent that it does not grant the party all the relief requested, i.e., the full relief or the preferred form of relief sought by the party. See also State v. Castillo, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997).

As an example, a criminal defendant seeking reversal of his conviction or, if that is not granted, resentencing, would be entitled to seek review of the court of appeals' failure to grant a new trial, even if it did order resentencing. Similarly, a civil appellant challenging a verdict finding liability and, should that be denied, the amount of damages, would be entitled to seek review of the court of appeals' failure to grant a new trial on liability, even if the court of appeals did order reassessment of damages.

**SECTION 9.** 809.62 (1m) (title) of the statutes is created to read:

809.62 (1m) (title) GENERAL RULE; TIME LIMIT.

**SECTION 10.** 809.62 (1r) (intro.) of the statutes is created to read:

809.62 (1r) CRITERIA FOR GRANTING REVIEW. (intro.) Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. The following, while neither controlling nor fully

measuring the court's discretion, indicate criteria that will be considered:

**SECTION 11.** The following Judicial Council Committee Comment to s. 809.62 (1m) and (1r) is included to read as follows:

Judicial Council Committee Comment

Rules 809.62 (1m) and (1r) are former Rule 809.62 (1), divided into subsections and subtitled. Subtitles are added throughout Rule 809.62 to help practitioners and parties locate particular provisions.

**SECTION 12.** 809.62 (2) (title) of the statutes is created to read:

809.62 (2) (title) CONTENTS OF PETITION.

**SECTION 13.** 809.62 (2) (a), (d) and (f) 2. of the statutes are amended to read:

809.62 (2) (a) A statement of the issues ~~presented for review~~ the petitioner seeks to have reviewed, the method or manner of raising the issues in the court of appeals and how the court of appeals decided the issues. The statement of issues shall also identify any issues the petitioner seeks to have reviewed that were not decided by the court of appeals. The statement of an issue shall be deemed to comprise every subsidiary issue as determined by the court. If deemed appropriate by the supreme court, the matter may be remanded to the court of appeals.

(d) A statement of the case containing a description of the nature of the case; the procedural status of the case leading up to the review; the dispositions in the ~~trial~~ circuit court and court of appeals; and a statement of those facts not included in



the opinion of the court of appeals relevant to the issues presented for review, with appropriate ~~references~~ citation to the record.

(f) 2. ~~Judgment~~ The judgments, orders, findings of fact, conclusions of law and memorandum decisions of the circuit court and administrative agencies necessary for an understanding of the petition.

**SECTION 14.** The following Judicial Council Committee Comment to s. 809.62 (2) (a) is included to read as follows:

Judicial Council Committee Comment

Rule 809.62(2)(a) is amended to require the petitioner to identify all issues on which it seeks review, including issues raised in the court of appeals but not decided in the court of appeals. The amendment to Rule 809.62(2)(a) also clarifies that the statement of an issue incorporates all subsidiary issues. This amendment is adapted from the United States Supreme Court's rules. See U.S. Sup. Ct. Rule 14.1(a). See also In the Interest of Jamie L., 172 Wis. 2d 218, 232-33, 493 N.W.2d 56 (1992).

**SECTION 15.** 809.62 (2m) (title) of the statutes is created to read:

809.62 (2m) (title) INAPPLICABLE TO PARENTAL CONSENT TO ABORTION CASES.

**SECTION 16.** 809.62 (2r) (title) of the statutes is created to read:

809.62 (2r) (title) APPLICATION TO TERMINATION OF PARENTAL RIGHTS CASES.

**SECTION 17.** 809.62 (3) of the statutes is amended to read:

809.62 (3) Except as provided in s. 809.32 (4), an opposing party may file a response to the petition within 14 days after

the service of the petition. If filed, the response may contain any of the following:

(a) Any reasons for denying the petition.

(b) Any perceived defects that may prevent ruling on the merits of any issue in the petition.

(c) Any perceived misstatements of fact or law set forth in the petition that have a bearing on the question of what issues properly would be before the court if the petition were granted.

(d) Any alternative ground supporting the court of appeals result or a result less favorable to the opposing party than that granted by the court of appeals.

(e) Any other issues the court may need to decide if the petition is granted, in which case the statement shall indicate whether the other issues were raised before the court of appeals, the method or manner of raising the issues in the court of appeals, whether the court of appeals decided the issues, and how the court of appeals decided the issues.

**SECTION 18:** 809.62 (3) (title) of the statutes is created to read:

809.62 (3) (title) RESPONSE TO PETITION.

**SECTION 19.** The following Judicial Council Committee Comment to s. 809.62 (3) is included to read as follows:

Judicial Council Committee Comment

Rule 809.62(3) is amended to advise the respondent to apprise the supreme court, in the response to the petition, of any issues the court may need to decide if it grants review of the issue(s) identified in the petition. This applies whether or not the court of appeals actually decided the issues to be raised.

The amendments to Rule 809.62(3) also advise the respondent to identify in its response any perceived misstatements of law or fact, or any defects (such as waiver, mootness, or estoppel) that could prevent the supreme court from reaching the merits of the issue presented in the petition. Compare U.S. Sup. Ct. Rule 15.2.

Rule 809.62(3)(d) addresses the circumstance in which the respondent asserts an alternative ground to defend the court of appeals' ultimate result or outcome, whether or not that ground was raised or ruled upon by the lower courts.

Rule 809.62(3)(d) also addresses the circumstances in which the respondent asserts an alternative ground that would result in a judgment less favorable than that granted by the court of appeals but more favorable to the respondent than might be granted for the petitioner (e.g., remand for a new trial rather than a rendition of judgment for the petitioner). The language is modified from Tex. R. App. P. 53.3(c)(3).

Rule 809.62(3)(d) and (e) are intended to facilitate the supreme court's assessment of the issues presented for review, not to change current law regarding the application of waiver principles to a respondent. See State v. Holt, 128 Wis. 2d 110, 125, 382 N.W.2d 679 (Ct. App. 1985) (An appellate court may sustain a lower court's holding on a theory or on reasoning not presented to the lower court.)

Implicit in these amendments, although not expressly stated as in the federal rule, U.S. Sup. Ct. Rule 15.2, is the understanding that a respondent may be deemed to have waived issues or defects that do not go to jurisdiction if they are not called to the attention of the supreme court in a response to the petition. The supreme court retains its inherent authority to disregard any waiver and address the merits of an unpreserved argument or to engage in discretionary review under Wis. Stat. §§ 751.06 or 752.35. See State v. Mikrut, 2004 WI 79, ¶38. The possible invocation of waiver for failure to raise such alleged defects in the response will encourage the respondent to inform the supreme court of such defects before the supreme court decides whether to expend scarce judicial resources on the case. See Oklahoma City v. Tuttle, 471 U.S. 808, 815-16 (1985).

A number of other states have rules requiring the respondent to identify other issues it seeks to raise if review is granted, and either expressly or impliedly limiting the issues before the supreme court on a grant of review to those set forth in the petition and response. See Ariz. R. Civ. App. P. 23(e); Calif. App. R. 28(e)(2) & (5); Kan. R.S. & A. Cts. Rule 8.03(g)(1); N.C. R. App. P. 15(d) & 16(a); Oregon R. App. P. 9.20(2); Wash. R. App. 13.4(d).

A leading handbook on United States Supreme Court practice describes the procedure in that Court as follows:

A respondent may also choose to waive the right to oppose a petition, which seems clearly without merit. This will save time and money, without any

substantial risk if respondent feels certain that certiorari will be denied. In order that the waiver will clearly be understood as based upon the lack of merit in the petition, the statement filed with the Court—which may be in the form of a letter to the Clerk—should contain language to this effect: "In view of the fact that the case clearly does not warrant review by this Court [as is shown by the opinion below], respondent waives the right to file a brief in opposition." The letter may also request leave to file a response to the petition if the Court wishes to see one. This will seldom be necessary, since if the respondent has not filed a response, or has affirmatively waived the right to file, and if the Court believes that the petition may have some merit, the respondent will usually be requested to file a response—usually within 30 days from the request.

In recent years, in order to expedite the filing of responses in the more meritorious cases, the Solicitor General has waived the right to file opposition briefs in many cases deemed to be frivolous or insubstantial. States often do the same thing, especially in criminal cases. Such waivers should be filed promptly, in order to speed up the distribution of the petition and the disposition of the case. Usually such petitions are denied, even though the Court may call for a response if any of the Justices so request.

Stern, R., et al., Supreme Court Practice §6.37 at 374-75 (7th ed. 1993) (footnote omitted).

**SECTION 20.** 809.62 (3m) of the statutes is created to read:

809.62 (3m) PETITION FOR CROSS-REVIEW. (a) *When required; time limit.* A party who seeks to reverse, vacate, or modify an adverse decision of the court of appeals shall file a petition for cross-review within the period for filing a petition for review with the supreme court, or 30 days after the filing of a petition for review by another party, whichever is later.

(b) *No cross-petition required.* 1. A petition for cross-review is not necessary to enable an opposing party to defend the court of appeals' ultimate result or outcome based on any ground, whether or not that ground was ruled upon by the lower

js

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SK ✓  
x ✓ ✓ ✓

1-15-09

Gen Cat

1 AN ACT /...; relating to: appellate time limits and procedure

Insert  
Analysis  
goes here

*Analysis by the Legislative Reference Bureau*

INSERT ANALYSIS

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 808.10 of the statutes is renumbered 808.10 (1) and amended to  
3 read:

4 808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision of the court of appeals is  
5 reviewable by the supreme court only upon a petition for review granted by the  
6 supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62 (1m),  
7 the petition for review shall be filed in the supreme court within 30 days of the date  
8 of the decision of the court of appeals.

History: 1977 c. 187; 1979 c. 192.

9 SECTION 2. 808.10 (2) of the statutes is created to read:

## 808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. (a) Filing of

a motion for reconsideration in the court of appeals under s. 809.24 (1) within 20 days after the date of a decision of the court of appeals tolls the time for filing a petition for review in the supreme court.

under 809.24(1) within 20 days after the date of a decision of the court of appeals

(b) If the motion for reconsideration is filed in the court of appeals before any

petition for review is filed in the supreme court, the 30-day time period to file the

petition for review starts on the date the court of appeals determines the motion for

reconsideration by filing an order denying the motion for reconsideration or an

amended decision.

## SECTION 3. 809.24 (4) of the statutes is repealed and recreated to read:

809.24 (4) No motion for reconsideration of a court of appeals decision issued under s. 809.105 or 809.107 is permitted.

History: Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii.

## SECTION 4. 809.32 (4) of the statutes is repealed and recreated to read:

809.32 (4) NO-MERIT PETITION FOR REVIEW. (a) *Petition and supplemental petition.* If a fully briefed appeal is taken to the court of appeals and the attorney is of the opinion that a petition for review in the supreme court under s. 809.62 would be frivolous and without any arguable merit, the attorney shall advise the person of the reasons for this opinion and that the person has the right to file a petition for review. If requested by the person, the attorney shall file a petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).

1 (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and  
 2 supplemental petition shall both be filed within 30 days after the date of the decision  
 3 or order of the court of appeals.

4 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may  
 5 file a response to the petition and supplemental petition as provided in s. 809.62 (3)  
 6 within 14 days after the service of the supplemental petition.

**History:** Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1981 c. 390 s. 252; 1983 a. 192; Sup. Ct. Order, 123 Wis. 2d xix (1985); 1987 a. 403 s. 256; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09.

7 **INSERT A**

8 **SECTION 5.** 809.62 (1m) of the statutes is repealed and recreated to read:

9 809.62 (1m) GENERAL RULE; TIME ~~LIMIT~~ <sup>PLAIN</sup> LIMITS. (a) A party may file with the  
 10 supreme court a petition for review of an adverse decision of the court of appeals  
 11 pursuant to s. 808.10 ~~within 30 days of the date of the decision of the court of appeals.~~

**History:** Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1991 a. 263; Sup. Ct. Order No. 93-20, 179 Wis. 2d xxv; 1993 a. 395; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09; s. 13.92 (1) (bm) 2.

12 **INSERT B**

13 **SECTION 6.** 809.62 (3) (intro.) of the statutes is amended to read:

14 809.62 (3) RESPONSE TO PETITION. (intro.) Except as provided in sub. (1m) and  
 15 s. 809.32 (4) and (5), an opposing party may file a response to the petition within 14  
 16 days after the service of the petition. If filed, the response may contain any of the  
 17 following:

**History:** Sup. Ct. Order, 83 Wis. 2d xiii (1978); Sup. Ct. Order, 92 Wis. 2d xiii (1979); Sup. Ct. Order, 104 Wis. 2d xi (1981); 1991 a. 263; Sup. Ct. Order No. 93-20, 179 Wis. 2d xxv; 1993 a. 395; Sup. Ct. Order No. 00-02, 2001 WI 39, 242 Wis. 2d xxvii; Sup. Ct. Order No. 02-01, 2002 WI 120, 255 Wis. 2d xiii; Sup. Ct. Order No. 04-08, 2008 WI 108, filed 7-30-08, eff. 1-1-09; s. 13.92 (1) (bm) 2.

18 **SECTION 7. Effective date.**

19 (1) This act takes effect on the first day of the 4th month beginning after  
 20 publication.

21 (END)

① SECTION # Initial Applicability.

② (1). This act first applies to actions commenced on the effective date of this subsection.

## 2007 SENATE BILL 418

January 25, 2008 – Introduced by Senator TAYLOR, cosponsored by Representative BIES, by request of Wisconsin Judicial Council. Referred to Committee on Judiciary, Corrections, and Housing.

- 1     **AN ACT** *to renumber and amend* 808.10; *to amend* 809.62 (1) (intro.) and  
2           809.62 (3); *to repeal and recreate* 809.24 (4) and 809.32 (4); and *to create*  
3           808.10 (2), 809.32 (5) and 809.62 (1m) of the statutes; **relating to:** appellate  
4           time limits and procedure.

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### *Analysis by the Legislative Reference Bureau*

*Insert analysis* Current law requires that a person seeking supreme court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. This bill tolls the time for filing a petition for review while a timely motion for reconsideration is pending in the court of appeals. The bill establishes revised time limits within which a petition may be filed, amended, or withdrawn, and within which an opposing party may respond, following the court of appeals determination of the motion for reconsideration. *which*

Under current law, if the attorney in a case appealed to the court of appeals is of the opinion that a petition for review in the supreme court would be frivolous, he or she must advise his or her client of the reasons for that opinion and that the client may file a petition for review. If the client decides to appeal to the supreme court, the attorney shall file a petition for review that includes the facts and procedural status of the case, the dispositions of the case in the lower courts, and an appendix containing the judgments, orders, findings of fact, conclusions of law, and other decisions necessary for an understanding of the petition. The client files a



## SENATE BILL 418

supplemental petition containing the statement of the issues and arguments in the case. The petition and supplemental petition must be filed in the supreme court within 30 days after the decision or order of the court of appeals.

This bill prohibits the filing of a petition or supplemental petition in the supreme court until after the court of appeals issues a response to a timely motion for reconsideration of its decision or order. If a person filed a petition or supplemental petition in the supreme court before the court of appeals issued a response to a timely motion for reconsideration, the bill requires the person to file a notice affirming, withdrawing, or amending the pending petition or supplemental petition, within 14 days after the court of appeals decision. If a petition or supplemental petition in the supreme court was made before the court of appeals issued response to a motion for reconsideration, and that motion was denied, the bill allows the other party 14 days after the court of appeals denial to file a response to the petition or supplemental petition. The bill gives that party the same 14-day period to respond to a petition or supplemental petition filed after the motion for reconsideration was denied, or after the petition or supplemental petition was affirmed or amended in response to an amended court of appeals decision, after reconsideration.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 808.10 of the statutes is renumbered 808.10 (1) and amended to read:

808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision or order of the court of appeals is reviewable by the supreme court only upon a petition for review granted by the supreme court. ~~The~~ Except as provided in sub. (2) and ss. 809.32 (5) and 809.62 (1m), the petition for review shall be filed in the supreme court within 30 days of the date of the decision of the court of appeals.

SECTION 2. 808.10 (2) of the statutes is created to read:

808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION. (a) Filing of a motion for reconsideration in the court of appeals under s. 809.24 (1) within 20 days after the date of a decision of the court of appeals tolls the time for filing a petition for review in the supreme court.

**SENATE BILL 418**

(b) If the motion for reconsideration is filed in the court of appeals before any petition for review is filed in the supreme court, the 30-day time period to file the petition for review starts on the date on which the court of appeals determines the motion for reconsideration by filing an order denying the motion for reconsideration or an amended decision.

**SECTION 3.** 809.24 (4) of the statutes is repealed and recreated to read:

809.24 (4) No motion for reconsideration of a court of appeals decision issued under s. 809.105 or 809.107 is permitted.

**SECTION 4.** 809.32 (4) of the statutes is repealed and recreated to read:

809.32 (4) NO-MERIT PETITION FOR REVIEW; PETITIONS. (a) *Petition and supplemental petition.* If a fully briefed appeal is taken to the court of appeals and the attorney is of the opinion that a petition for review in the supreme court under s. 809.62 would be frivolous and without any arguable merit, the attorney shall advise the person of the reasons for this opinion and that the person has the right to file a petition for review. If requested by the person, the attorney shall file a petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).

(b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and supplemental petition shall both be filed within 30 days after the date of the decision or order of the court of appeals.

(c) *Responses time limit.* Except as provided in sub. (5), an opposing party may file a response to the petition and supplemental petition within 14 days after the service of the supplemental petition.

**SECTION 5.** 809.32 (5) of the statutes is created to read:

Insert  
A

## SENATE BILL 418

Insert Account

1           809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR  
2 RECONSIDERATION. (a) *Petition*. If a motion for reconsideration <sup>has been</sup> is timely filed in the  
3 court of appeals under s. 809.24 (1), no party may file a petition or a supplemental  
4 petition in the supreme court until after the court of appeals issues an order denying  
5 the motion for reconsideration or an amended decision.

6           (b) *Supplemental petition*. If a motion for reconsideration in the court of  
7 appeals under s. 809.24 (1) is denied and a petition for review was filed before the  
8 motion for reconsideration was filed, and if the time for filing a supplemental petition  
9 under this subsection had not expired when the motion for reconsideration was filed,  
10 the supplemental petition may be filed within 14 days after the filing of the order  
11 denying the motion for reconsideration or within the time remaining to file the  
12 supplemental petition at the time that the motion for reconsideration was filed,  
13 whichever is greater.

14           (c) *Notice affirming, withdrawing, or amending pending petition or*  
15 *supplemental petition*. If the court of appeals files an amended decision in response  
16 to the motion for reconsideration under s. 809.24 (1), any party who filed a petition  
17 for review or a supplemental petition for review under this subsection prior to the  
18 filing of the motion for reconsideration must file with the clerk of the supreme court  
19 a notice affirming the pending petition or supplemental petition, a notice  
20 withdrawing the pending petition or supplemental petition, or an amendment to the  
21 pending petition or supplemental petition within 14 days after the date of the filing  
22 of the court of appeals' amended decision.

23           (d) *Responses*. If a motion for reconsideration is denied and a petition for review  
24 or a supplemental petition had been filed before the motion for reconsideration was  
25 filed, and if the time for filing a response to the petition or supplemental petition had

**SENATE BILL 418**

not expired when the motion for reconsideration was filed, a response to the petition or the supplemental petition may be filed within 14 days of the order denying the motion for reconsideration. If a supplemental petition is filed under par. (b), the responding party may file a response to the supplemental petition within 14 days after service of the supplemental petition. After the petitioning party files the notice affirming or withdrawing the pending petition or supplemental petition or an amendment to the pending petition or supplemental petition under par. (c), the responding party must file a response to the notice or amendment within 14 days after service of the notice or amendment. The response to the notice or amendment may be an affirmation of the responding party's earlier response or a new response.

**SECTION 6.** 809.62 (1) (intro.) of the statutes is amended to read:

809.62 (1) (intro.) A party may file with the supreme court a petition for review of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days of the date of the decision of the court of appeals.~~ Supreme court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. The following, while neither controlling nor fully measuring the court's discretion, indicate criteria that will be considered:

**SECTION 7.** 809.62 (1m) of the statutes is created to read:

809.62 (1m) (a) If a motion for reconsideration ~~is~~ <sup>has been</sup> timely filed in the court of appeals under s. 809.24 (1), no party may file a petition for review in the supreme court until after the court of appeals issues an order denying the motion for reconsideration or an amended decision.

(b) If a motion for reconsideration is denied and a petition for review had been filed before the motion for reconsideration was filed, and if the time for filing a response to the petition had not expired when the motion for reconsideration was

## SENATE BILL 418

## SECTION 7

1 filed, a response to the petition may be filed within 14 days of the order denying the  
2 motion for reconsideration.

3 (c) If the court of appeals files an amended decision in response to the motion  
4 for reconsideration under s. 809.24 (1), any party who filed a petition for review prior  
5 to the filing of the motion for reconsideration must file with the clerk of the supreme  
6 court a notice affirming the pending petition, a notice withdrawing the pending  
7 petition, or an amendment to the pending petition within 14 days after the date of  
8 the filing of the court of appeals' amended decision.

9 (d) After the petitioning party files a notice affirming or withdrawing the  
10 pending petition or an amendment to the pending petition under par. (c), the  
11 responding party must file a response to the notice or amendment within 14 days  
12 after service of the notice or amendment. The response may be an affirmation of the  
13 responding party's earlier response or a new response.

14 **SECTION 8.** 809.62 (3) of the statutes is amended to read:

15 809.62 (3) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing  
16 party may file a response to the petition within 14 days after the service of the  
17 petition.

18 **SECTION 9. Effective date.**

19 (1) This act takes effect on the first day of the 4th month beginning after  
20 publication.

21 (END)

**Hurley, Peggy**

**From:** Peterson, Eric  
**Sent:** Monday, February 16, 2009 11:50 AM  
**To:** Hurley, Peggy  
**Subject:** FW: Judicial Council Legislation Package

See below.

***Eric M. Peterson***

Chief of Staff, Senator Lena C. Taylor  
 Wisconsin State Senator - 4th Senate District  
*t* - 608-266-5810 *f* - 608-267-2353

---

**From:** Stephens, Marla [mailto:StephensM@opd.wi.gov]  
**Sent:** Monday, February 16, 2009 11:38 AM  
**To:** Peterson, Eric  
**Cc:** Battiato, Kate; Southwick, April - COURTS  
**Subject:** RE: Judicial Council Legislation Package

Good morning Eric:

I think the first two bill drafts (LRB 09-0266/1 & 09-2012/1 Appellate Procedure, and LRB 09-0059/3 & 09-1926/1 Appeals in Cases of Civil Commitment) are ready to circulate.

There is one change that I recommend to the bill drafts for LRB 09-0073/1 and 09-2139/1 (Appellate Time Limits): in Section 2, line 10, insert "s." before "809.24 (1)."

I also recommend that the second paragraph of the Analysis of LRB 09-0073/1 and 09-2139/1 (Appellate Time Limits) be deleted from the bill drafts and the memo. I think it is confusing, and not necessary for an understanding of what the bills do. It focuses attention on a particular type of petition for review (the no merit petition for review filed by an appointed attorney) - but the bill itself applies equally to all types of petitions for review (civil, criminal, merit or no-merit). If this paragraph is retained, it should be amended to clarify that it applies to APPOINTED attorneys only.

Thank you so much for your work on the memo and for shepherding the redrafts. Please let me, or April Southwick, know if you need anything!

Marla Stephens  
 Chairperson, Wisconsin Judicial Council

---

Atty. Marla J. Stephens  
 Director, Appellate Division  
 Wisconsin State Public Defender Office

stephensm@opd.wi.gov  
 Direct 414-227-4891 Fax 414-227-4508 Monday, Tuesday, Thursday  
 Direct 608-264-8573 Fax 608-267-0584 Wednesday, Friday  
 Cell 608-516-1232

02/16/2009

-----Original Message-----

**From:** Peterson, Eric [mailto:Eric.Peterson@legis.wisconsin.gov]  
**Sent:** Monday, February 16, 2009 10:20 AM  
**To:** Stephens, Marla; Southwick, April - COURTS  
**Cc:** Battiato, Kate  
**Subject:**

**MARLA & APRIL, below is the co-sponsor memo for the drafts. Hebl has okayed all three, so I wanted to make sure that this memo is ok and that LRB 0073/1 is ready for introduction from your end. I won't send these out until I hear back from you.**

**ERIC**

**TO:** Legislative Colleagues  
**FROM:** Senator Lena C Taylor & Representative Gary Hebl  
**DATE:** Monday, February 16<sup>th</sup>, 2009  
**RE:** Co-Sponsorship of Judicial Council Legislation Package

LRB 09-0266/1 & 09-2012/1 re: Appellate Procedure  
 LRB 09-0059/3 & 09-1926/1 re: appeals in cases of civil commitment  
 LRB 09-0073/1 & 09-2139/1 re: Appellate Time Limits

**DEADLINE: Thursday, February 26<sup>th</sup>, 2009 5pm**

Colleagues:

As the Legislature's designees to the Wisconsin Judicial Council, we are introducing this legislative package (three bills) at the request of the Judicial Council. The Wisconsin Judicial Council is an independent state agency comprised of 21 volunteer members and a staff attorney. The council reviews and makes recommendations to the Courts regarding judicial practice, court organization, and other court-related matters.

These bills represent the last pieces of a review and amending of the appeals process in Wisconsin. Much of the council's work was approved by the Supreme Court in rule format; these changes were determined as needing statutory change. All three of these bills were passed last session by the Senate. (2007 SB 418, 420, and 419 respectively.)

The LRB analysis of each of the bills is below and each draft is attached. April Southwick, staff attorney for the Wisconsin Judicial Council, is available to answer questions about the exact nature of each change. She can be reached at 1-8290 or at [April.Southwick@wicourts.gov](mailto:April.Southwick@wicourts.gov).

We invite you to join us in offering these bills to the Legislature. Please call Madu in Senator Taylor's office at 6-5810 or Kate in Rep. Hebl's office at 6-7678 or reply to this email by 5pm on Thursday, February 26<sup>th</sup>.

Thank you.

***09-0266/1 & 09-2012/1 Analysis by the Legislative Reference Bureau***

In criminal cases, current law permits the review of an order denying a motion to suppress evidence or a motion challenging admissibility of a defendant's statement as part of an appeal from a conviction, notwithstanding the fact that the judgment of conviction was entered on a guilty plea. This bill permits review of an order denying a motion to suppress evidence or a motion challenging admissibility of a statement of a defendant as part of an appeal from a final judgment or order, notwithstanding the fact that the final judgment or order was entered on an admission of guilt or a no contest plea. This bill also permits the review of orders denying a motion to suppress evidence or a motion challenging admissibility of

02/16/2009

the statement of a juvenile upon review from a final judgment or order, notwithstanding the fact that the final judgment or order was entered upon a plea of no contest or an admission to the allegations of a petition filed in cases involving juveniles alleged to be delinquent.

***09-0059/3 & 09-1926/1 Analysis by the Legislative Reference Bureau***

Current law establishes the appellate procedures applicable to various types of cases. Under current law, appeals in criminal cases and cases involving children, juveniles alleged to be delinquent, protective services, or persons subject to commitment as sexually violent persons or due to mental health or drug abuse must follow a specific set of appeal procedures. Under current law, appeals in cases involving commitments of persons found not guilty by reason of mental disease or defect follow the criminal appeals process, although there is no specific statutory authority for this. This bill clarifies that there is one integrated appeal procedure for all of these types of cases.

***09-0073/1 & 09-2139/1 Analysis by the Legislative Reference Bureau***

Current law requires that a person seeking supreme court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. This bill tolls the time for filing a petition for review while a timely motion for reconsideration is pending in the court of appeals. The bill establishes revised time limits within which a petition may be filed, amended, or withdrawn, and within which an opposing party may respond, following the court of appeals determination of the motion for reconsideration.

Under current law, if the attorney in a case appealed to the court of appeals is of the opinion that a petition for review in the supreme court would be frivolous, he or she must advise his or her client of the reasons for that opinion and that the client may file a petition for review. If the client decides to appeal to the supreme court, the attorney shall file a petition for review that includes the facts and procedural status of the case, the dispositions of the case in the lower courts, and an appendix containing the judgments, orders, findings of fact, conclusions of law, and other decisions necessary for an understanding of the petition. The client files supplemental petition containing the statement of the issues and arguments in the case. The petition and supplemental petition must be filed in the supreme court within 30 days after the decision or order of the court of appeals.

This bill prohibits the filing of a petition or supplemental petition in the supreme court until after the court of appeals issues a response to a timely motion for reconsideration of its decision or order. If a person filed a petition or supplemental petition in the supreme court before the court of appeals issued a response to a timely motion for reconsideration, the bill requires the person to file a notice affirming, withdrawing, or amending the pending petition or supplemental petition, within 14 days after the court of appeals decision. If a petition or supplemental petition in the supreme court was made before the court of appeals issued a response to a motion for reconsideration, and that motion was denied, the bill allows the other party 14 days after the court of appeals denial to file a response to the petition or supplemental petition. The bill gives that party the same 14-day period to respond to a petition or supplemental petition filed after the motion for reconsideration was denied, or after the petition or supplemental petition was affirmed or amended in response to an amended court of appeals decision, after reconsideration.

<<09-02661 Appellate Procedure.pdf>> <<09-00593 Appellate Procedures in 980 Cases.pdf>> <<09-00731 Appellate Time Limits.pdf>>



## 2009 BILL

by 2-18-09

- 1 AN ACT *to renumber and amend* 808.10; *to amend* 809.62 (3) (intro.); *to*  
2 *repeal and recreate* 809.24 (4), 809.32 (4) and 809.62 (1m); and *to create*  
3 808.10 (2) and 809.32 (5) of the statutes; **relating to:** appellate time limits and  
4 procedure.

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***Analysis by the Legislative Reference Bureau***

Current law requires that a person seeking supreme court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. This bill tolls the time for filing a petition for review while a timely motion for reconsideration is pending in the court of appeals. The bill establishes revised time limits within which a petition may be filed, amended, or withdrawn, and within which an opposing party may respond, following the court of appeals determination of the motion for reconsideration.

an Under current law, if the attorney in a case appealed to the court of appeals is of the opinion that a petition for review in the supreme court would be frivolous, he or she must advise his or her client of the reasons for that opinion and that the client may file a petition for review. If the client decides to appeal to the supreme court, the attorney shall file a petition for review that includes the facts and procedural status of the case, the dispositions of the case in the lower courts, and an appendix containing the judgments, orders, findings of fact, conclusions of law, and other decisions necessary for an understanding of the petition. The client files a

who was appointed to represent a client

**BILL**

supplemental petition containing the statement of the issues and arguments in the case. The petition and supplemental petition must be filed in the supreme court within 30 days after the decision or order of the court of appeals.

This bill prohibits the filing of a petition or supplemental petition in the supreme court until after the court of appeals issues a response to a timely motion for reconsideration of its decision or order. If a person filed a petition or supplemental petition in the supreme court before the court of appeals issued a response to a timely motion for reconsideration, the bill requires the person to file a notice affirming, withdrawing, or amending the pending petition or supplemental petition, within 14 days after the court of appeals decision. If a petition or supplemental petition in the supreme court was made before the court of appeals issued a response to a motion for reconsideration, and that motion was denied, the bill allows the other party 14 days after the court of appeals denial to file a response to the petition or supplemental petition. The bill gives that party the same 14-day period to respond to a petition or supplemental petition filed after the motion for reconsideration was denied, or after the petition or supplemental petition was affirmed or amended in response to an amended court of appeals decision, after reconsideration.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1        **SECTION 1.** 808.10 of the statutes is renumbered 808.10 (1) and amended to  
2 read:

3        808.10 (1) PETITION FOR REVIEW; TIME LIMIT. A decision of the court of appeals  
4 is reviewable by the supreme court only upon a petition for review granted by the  
5 supreme court. ~~The~~ Except as provided in sub. (2) and ss. 809.32 (5) and 809.62 (1m),  
6 the petition for review shall be filed in the supreme court within 30 days of the date  
7 of the decision of the court of appeals.

8        **SECTION 2.** 808.10 (2) of the statutes is created to read:

9        808.10 (2) **TOLLING PENDING COURT OF APPEALS RECONSIDERATION.** If a motion for  
10 reconsideration is filed in the court of appeals under <sup>S.</sup>809.24 (1) within 20 days after  
11 the date of a decision of the court of appeals, the 30-day time period to file the petition  
12 for review starts on the date the court of appeals determines the motion for

**BILL**

1 reconsideration by filing an order denying the motion for reconsideration or an  
2 amended decision.

3 **SECTION 3.** 809.24 (4) of the statutes is repealed and recreated to read:

4 809.24 (4) No motion for reconsideration of a court of appeals decision issued  
5 under s. 809.105 or 809.107 is permitted.

6 **SECTION 4.** 809.32 (4) of the statutes is repealed and recreated to read:

7 809.32 (4) NO-MERIT PETITION FOR REVIEW. (a) *Petition and supplemental*  
8 *petition.* If a fully briefed appeal is taken to the court of appeals and the attorney is  
9 of the opinion that a petition for review in the supreme court under s. 809.62 would  
10 be frivolous and without any arguable merit, the attorney shall advise the person of  
11 the reasons for this opinion and that the person has the right to file a petition for  
12 review. If requested by the person, the attorney shall file a petition satisfying the  
13 requirements of s. 809.62 (2) (d) and (f), and the person shall file a supplemental  
14 petition satisfying the requirements of s. 809.62 (2) (a), (b), (c), and (e).

15 (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and  
16 supplemental petition shall both be filed within 30 days after the date of the decision  
17 or order of the court of appeals.

18 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may  
19 file a response to the petition and supplemental petition as provided in s. 809.62 (3)  
20 within 14 days after the service of the supplemental petition.

21 **SECTION 5.** 809.32 (5) of the statutes is created to read:

22 809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR  
23 RECONSIDERATION. (a) *Petition.* If a motion for reconsideration has been timely filed  
24 in the court of appeals under s. 809.24 (1), no party may file a petition or a

**BILL****SECTION 5**

1 supplemental petition in the supreme court until after the court of appeals issues an  
2 order denying the motion for reconsideration or an amended decision.

3 (b) *Supplemental petition.* If a motion for reconsideration in the court of  
4 appeals under s. 809.24 (1) is denied and a petition for review was filed before the  
5 motion for reconsideration was filed, and if the time for filing a supplemental petition  
6 under this subsection had not expired when the motion for reconsideration was filed,  
7 the supplemental petition may be filed within 14 days after the filing of the order  
8 denying the motion for reconsideration or within the time remaining to file the  
9 supplemental petition at the time that the motion for reconsideration was filed,  
10 whichever is greater.

11 (c) *Notice affirming, withdrawing, or amending pending petition or*  
12 *supplemental petition.* If the court of appeals files an amended decision in response  
13 to the motion for reconsideration under s. 809.24 (1), any party who filed a petition  
14 for review or a supplemental petition for review under this section prior to the filing  
15 of the motion for reconsideration must file with the clerk of the supreme court a  
16 notice affirming the pending petition or supplemental petition, a notice withdrawing  
17 the pending petition or supplemental petition, or an amendment to the pending  
18 petition or supplemental petition within 14 days after the date of the filing of the  
19 court of appeals' amended decision.

20 (d) *Responses.* If a motion for reconsideration is denied and a petition for review  
21 or a supplemental petition had been filed before the motion for reconsideration was  
22 filed, and if the time for filing a response to the petition or supplemental petition had  
23 not expired when the motion for reconsideration was filed, a response to the petition  
24 or the supplemental petition may be filed within 14 days of the order denying the  
25 motion for reconsideration. If a supplemental petition is filed under par. (b), the

**BILL**

1     responding party may file a response to the supplemental petition within 14 days  
2     after service of the supplemental petition. After the petitioning party files the notice  
3     affirming or withdrawing the pending petition or supplemental petition or an  
4     amendment to the pending petition or supplemental petition under par. (c), the  
5     responding party must file a response to the notice or amendment within 14 days  
6     after service of the notice or amendment. The response to the notice or amendment  
7     may be an affirmation of the responding party's earlier response or a new response.

8           **SECTION 6.** 809.62 (1m) of the statutes is repealed and recreated to read:

9           **809.62 (1m) GENERAL RULE; TIME LIMITS.** (a) A party may file with the supreme  
10     court a petition for review of an adverse decision of the court of appeals pursuant to  
11     s. 808.10.

12           (b) If a motion for reconsideration has been timely filed in the court of appeals  
13     under s. 809.24 (1), no party may file a petition for review in the supreme court until  
14     after the court of appeals issues an order denying the motion for reconsideration or  
15     an amended decision.

16           (c) If a motion for reconsideration is denied and a petition for review had been  
17     filed before the motion for reconsideration was filed, and if the time for filing a  
18     response to the petition had not expired when the motion for reconsideration was  
19     filed, a response to the petition may be filed within 14 days of the order denying the  
20     motion for reconsideration.

21           (d) If the court of appeals files an amended decision in response to the motion  
22     for reconsideration under s. 809.24 (1), any party who filed a petition for review prior  
23     to the filing of the motion for reconsideration must file with the clerk of the supreme  
24     court a notice affirming the pending petition, a notice withdrawing the pending

**BILL****SECTION 6**

1 petition, or an amendment to the pending petition within 14 days after the date of  
2 the filing of the court of appeals' amended decision.

3 (e) After the petitioning party files a notice affirming or withdrawing the  
4 pending petition or an amendment to the pending petition under par. (d), the  
5 responding party must file a response to the notice or amendment within 14 days  
6 after service of the notice or amendment. The response may be an affirmation of the  
7 responding party's earlier response or a new response.

8 **SECTION 7.** 809.62 (3) (intro.) of the statutes is amended to read:

9 809.62 (3) RESPONSE TO PETITION. (intro.) Except as provided in sub. (1m) and  
10 s. 809.32 (4) and (5), an opposing party may file a response to the petition within 14  
11 days after the service of the petition. If filed, the response may contain any of the  
12 following:

13 **SECTION 8. Initial applicability.**

14 (1) This act first applies to actions commenced on the effective date of this  
15 subsection.

16 **SECTION 9. Effective date.**

17 (1) This act takes effect on the first day of the 4th month beginning after  
18 publication.

19 (END)

**Barman, Mike**

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**From:** Peterson, Eric  
**Sent:** Friday, February 27, 2009 1:11 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-0073/2 Topic: Time limit for filing petitions for review

RUSH

Please Jacket LRB 09-0073/2 for the SENATE.